

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

September 25, 2001 Session

STATE OF TENNESSEE v. KEITH GOODMAN

Appeal from the Criminal Court for Anderson County
No. A0CR0098 James B. Scott, Jr., Judge

No. E2001-00036-CCA-R3-CD
November 13, 2001

The state appeals the dismissal of the especially aggravated kidnapping charge against the defendant, Keith Goodman. The trial court held that the defendant, as the natural father of the infant victim, could not be held criminally liable for kidnapping because a natural parent's removal or confinement of a child is not "unlawful" as that term is defined in Tenn. Code Ann. § 39-13-301(2). The state claims that the trial court misinterpreted the kidnapping statutes. We conclude that the trial court's dismissal of the indictment was essentially a summary judgment for the defendant, which is improper in criminal cases. We reverse the trial court's ruling and remand the case for reinstatement of the indictment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Reversed and Remanded

JOSEPH M. TIPTON, J., delivered the opinion of the court, in which JOE G. RILEY and ALAN E. GLENN, JJ., joined.

Paul G. Summers, Attorney General and Reporter, and Elizabeth B. Marney, Assistant Attorney General, for the appellant, State of Tennessee.

J. Thomas Marshall, Jr., District Public Defender, Clinton, Tennessee, for the appellee, Keith Goodman.

OPINION

This case relates to the defendant's indictment for especially aggravated kidnapping of his infant daughter, Athene Baughman. The indictment alleges that the defendant unlawfully removed or confined Athene, a child under the age of thirteen, so as to substantially interfere with her liberty in violation of Tenn. Code Ann. § 39-13-305(2). Pursuant to Tenn. Code Ann. § 30-13-301(2), "unlawful" means that the removal or confinement of a child under thirteen was "accomplished without the consent of a parent, guardian or other person responsible for the general supervision of

the minor's . . . welfare." At the hearing on the defendant's motion to dismiss, the parties stipulated the following:

1. Amber Baughman and Keith Goodman have never been married to each other.
2. Amber Baughman gave birth to a child, Athene, in 1999. Keith Goodman and Amber Baughman acknowledge that Athene is the only natural child of Keith Goodman and Amber Baughman; and Keith Goodman is listed on Athene's birth certificate as the father.
3. No orders or judgments of any kind have been entered in any court regarding paternity, custody, visitation or support involving the child Athene.

The defendant contended that his conduct as a parent cannot be deemed "unlawful" under the stipulation. The trial court agreed, holding that because the defendant was the victim's natural father and was not subject to any court order, he could not "unlawfully" remove or confine his daughter.

The state contends that the trial court improperly dismissed the aggravated kidnapping indictment. The state argues that the definition of "unlawful" in Tenn. Code Ann. § 39-13-301(2) does not prohibit a natural parent from being convicted of especially aggravated kidnapping. Further, it contends that the trial court's ruling is inconsistent with case law. The defendant contends that the definition of "unlawful" in Tenn. Code Ann. § 39-13-301(2) is unambiguous and that if the legislature had intended for a natural parent to be able to commit especially aggravated kidnapping, it would have specified in the definition of "unlawful" that the removal or confinement of a child under the age of thirteen had to be accomplished without the consent of a custodial parent, guardian, or other person responsible for the supervision of the child's welfare. However, we do not believe that we are in a position to decide the issue as presented.

We note that the hearing conducted by the trial court was essentially a pretrial determination of the issue of guilt upon stipulated facts. Such a summary judgment procedure is not recognized in Tennessee for criminal cases. Rule 12(b), Tenn. R. Crim. P., states, "Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion." Generally, a trial court "may conduct pretrial evidentiary hearings . . . pursuant to Tenn. R. Crim. P. 12(b) . . . but only when a determination can be made without involving the general issue of guilt or innocence." State v. Vickers, 970 S.W.2d 444, 448 (Tenn. 1998). The defendant "'cannot, by moving to dismiss the indictment, force the trial court to conduct a 'mini-trial' in which the State must present its proof on the merits of the charge . . . or be cut short in its attempt to prosecute.'" State v. Jason R. Norton, No. M2000-00074-CCA-R3-CD, Robertson County, slip op. at 2 (Tenn. Crim. App. Apr. 16, 2001) (for publication) (quoting State v. Drew V. Saunders, No. 01C01-9712-CR-00584, Davidson County, slip op. at 7-8 (Tenn. Crim. App. Apr. 22, 1999)).

In State v. Burrow, 769 S.W.2d 510, 511 (Tenn. Crim. App. 1989), the defendants were charged with various crimes involving sales of securities. In a pretrial hearing, the court found that the documents in question were not “securities” under Tennessee law and dismissed four counts of each indictment. On appeal, the state argued that the trial court improperly decided a genuine issue of material fact and that the trial court entered summary judgment for the defendant. Noting that a security being involved in the transactions was an element of each crime, this court held that in deciding that the documents were not securities, the trial court improperly took the role of fact-finder and usurped the role of the jury. Id. at 513. Recognizing that summary judgment does not exist in criminal law, this court reversed the trial court and remanded the case for trial. Id. at 514. In Jason R. Norton, the defendant moved to dismiss his indictment for hindering a secured creditor, and he listed alleged facts in his motion. In an evidentiary hearing, the trial court heard testimony from the alleged victim and argument from both parties. Based on the evidence presented, the trial court found that the facts did not support the crime and dismissed the indictment. On appeal, this court held that the trial court improperly dismissed the indictment because it considered facts that “could only rationally bear upon the issue of guilt or innocence” Id. at 3. As in Burrow, this court reversed the trial court’s dismissal of the indictment and remanded the case for trial. Id. at 4.

We believe the trial court improperly dismissed the indictment for especially aggravated kidnapping. At the hearing on the motion to dismiss the indictment, the parties stipulated that the defendant is the natural parent of the infant victim. Based on that stipulated fact and the trial court’s interpretation of “unlawful” in Tenn. Code Ann. § 39-13-301(2), the trial court dismissed the indictment. Essentially, the trial court found that the facts of the case would not support a conviction for especially aggravated kidnapping and granted the defendant summary judgment, which does not exist in criminal cases. The trial court acted as the trier of fact and usurped the function of the jury.

Based upon the foregoing and the record as a whole, we reverse the trial court’s dismissal of the defendant’s indictment for especially aggravated kidnapping and remand the case for reinstatement of the indictment.

JOSEPH M. TIPTON, JUDGE